

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

CHARLES TINDER,

Plaintiff(s),

v.

GAUGHAN SOUTH LLC dba SOUTH POINT  
HOTEL AND CASINO, et al.,

Defendant(s).

Case No. 2:22-CV-950 JCM (DJA)

ORDER

Presently before the court is plaintiff Charles Tinder's ("plaintiff") motion to remand. (ECF No. 13). Defendants Gaughan South LLC d/b/a South Point Hotel and Casino and Greg Fisher ("defendants") filed a response. (ECF No. 16). Plaintiff has not replied, and the time to do so has passed.

**I. Background**

Plaintiff initiated this action in the Eighth Judicial District Court of Clark County in January 2022, alleging employment discrimination under state and federal law as well as breach of the implied covenant of good faith and fair dealing. (ECF Nos. 1, 1-1).

Service was attempted January 19, 2022, with no answer. (ECF No. 13 at 7, Exh. 1). Service was again attempted January 21, 2022, and the registered agent refused and stated that the paperwork must name Gaughan South LLC d/b/a South Point Hotel and Casino. (*Id.*). On March 21, 2022, service was attempted for a third time, and the registered agent again stated Gaughan South LLC must be named. (*Id.*). The pleading was ultimately served on May 3, 2022, without naming Gaughan South LLC. (ECF No. 13 at 9, Exh. 2). Plaintiff filed an amended complaint naming Gaughan South LLC on May 31, 2022. (ECF No. 1).

1 On June 15, 2022, defendant removed this action to this court based on federal question  
 2 jurisdiction. (ECF No. 1). On July 12, 2022, plaintiff timely filed the instant motion, arguing,  
 3 *inter alia*, that defendant failed to timely remove. (ECF No. 6).

## 4 **II. Legal Standard**

5 “‘Federal courts are courts of limited jurisdiction,’ possessing ‘only that power  
 6 authorized by Constitution and statute.’” *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting  
 7 *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994)). Pursuant to 28  
 8 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the  
 9 United States have original jurisdiction, may be removed by the defendant or the defendants, to  
 10 the district court of the United States for the district and division embracing the place where such  
 11 action is pending.” 28 U.S.C. § 1441(a).

12 Because the court’s jurisdiction is limited by the constitution and 28 U.S.C. §§ 1331,  
 13 1332, “[t]he threshold requirement for removal under 28 U.S.C. § 1441 is a finding that the  
 14 complaint contains a cause of action that is within the original jurisdiction of the district  
 15 court.” *Ansley v. Ameriquest Mortg. Co.*, 340 F.3d 858, 861 (9th Cir. 2003) (quoting *Toumajian*  
 16 *v. Frailey*, 135 F.3d 648, 653 (9th Cir. 1998)). Thus, “it is to be presumed that a cause lies  
 17 outside the limited jurisdiction of the federal courts and the burden of establishing the contrary  
 18 rests upon the party asserting jurisdiction.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042  
 19 (9th Cir. 2009).

20 Upon notice of removability, a defendant has thirty days to remove a case to federal court  
 21 once he knows or should have known that the case was removable. *Durham v. Lockheed Martin*  
 22 *Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006) (citing 28 U.S.C. § 1446(b)(2)). Defendants are not  
 23 charged with notice of removability “until they’ve received a paper that gives them enough  
 24 information to remove.” *Id.* at 1251.

25 “[N]otice of removability under § 1446(b) is determined through examination of the  
 26 four corners of the applicable pleadings, not through subjective knowledge or a duty to make  
 27 further inquiry.” *Harris*, 425 F.3d at 694. “Removal and subject matter jurisdiction statutes are  
 28 strictly construed, and a defendant seeking removal has the burden to establish that removal is

proper and any doubt is resolved against removability.” *Hawaii ex rel. Louie v. HSBC Bank Nev., N.A.*, 761 F.3d 1027, 1034 (9th Cir. 2014).

Specifically, “the ‘thirty day time period [for removal] . . . starts to run from defendant’s receipt of the initial pleading only when that pleading affirmatively reveals on its face’ the facts necessary for federal court jurisdiction.” *Durham*, 445 F.3d at 1250 (quoting *Harris v. Bankers Life & Casualty Co.*, 425 F.3d 689, 690–91 (9th Cir. 2005) (alterations in original)). “Otherwise, the thirty-day clock doesn’t begin ticking until a defendant receives ‘a copy of an amended pleading, motion, order or other paper’ from which it can determine that the case is removable.” *Id.* (quoting 28 U.S.C. § 1446(b)(3)).

A plaintiff may challenge removal by timely filing a motion to remand. 28 U.S.C. § 1447(c). On a motion to remand, the removing defendant must overcome the “strong presumption against removal jurisdiction” and establish that removal is proper. *Hunter*, 582 F.3d at 1042 (quoting *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam)). Due to this strong presumption against removal jurisdiction, the court resolves all ambiguity in favor of remand to state court. *Id.*

### III. Discussion

Plaintiff moves to remand due to defendants’ failure to remove this matter within thirty days of service. (ECF No. 13); *see* 28 U.S.C. § 1446(b); *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005).

Neither party disputes this court has original jurisdiction over at least one claim arising under federal law. *See* 28 U.S.C. § 1331; (ECF Nos. 13, 16). Rather, the parties dispute when defendants were on notice this matter was removable and consequently whether defendants’ removal was timely. (ECF Nos. 13, 16).

Plaintiff contends that defendants were on notice of removability as early as January 2022 when he first tried to serve defendants. (ECF No. 13). Service was refused because the initial complaint named only South Point Hotel and Casino rather than Gaughan South LLC. (ECF No. 13 at 7, Exh. 1). Plaintiff alternatively asserts that defendants were on notice when service was effectuated on May 3, 2022. (ECF No. 13 at 9–10, Exh. 2). The pleading again

1 named South Point Hotel and Casino rather than Gaughan South LLC. (*Id.*). Notably, all  
 2 versions of the complaint have named Greg Fisher and included plaintiff's federal question  
 3 claim.

4 Defendants assert service of process was not effectuated on Gaughan South LLC until  
 5 May 31, 2022, when plaintiff amended his complaint to name it as a defendant, and thus the  
 6 thirty-day time period for removal began May 31, 2022. (ECF No. 16); *see Durham*, 445 F.3d at  
 7 1250.

8 Defendants mistakenly believe effectuated service of the named party is necessary to  
 9 provide notice. Plaintiff, however, need not produce evidence of actual receipt of service; "risk  
 10 of nondelivery must fall upon the defendant." *Mitchell v. Second Jud. Dist. Ct.*, 418 P.2d 994,  
 11 997 (Nev. 1966).

12 Moreover, even though plaintiff only named the trade name rather than the legal name,  
 13 the registered agent for Gaughan South LLC recognized plaintiff's intention to sue Gaughan  
 14 South LLC.<sup>1</sup> Thus, as early as January 21, 2022, defendants were aware of a pleading sufficient  
 15 to give them notice of removability. Defendants did not remove this action until June 12, 2022,  
 16 which is past the thirty-day deadline. (ECF No. 1); *see Durham*, 445 F.3d at 1250.

17 This court finds that defendants failed to timely remove this matter. Thus, remand is  
 18 appropriate.

#### 19 **IV. Conclusion**

20 Accordingly,

21 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion to  
 22 remand (ECF No. 13) be, and the same hereby is, GRANTED.

23 DATED October 21, 2022.

24   
 25 UNITED STATES DISTRICT JUDGE

26  
 27  
 28 <sup>1</sup> The registered agent informed plaintiff's process server Gaughan South LLC must be on the  
 paperwork.